

SECOND DIVISION

[CA-G.R. CR NO. 35475, May 20, 2014]

**PEOPLE OF THE PHILIPPINES , PLAINTIFF-APPELLEE, VS.
EDMUND R. GONZALEZ, JR., ACCUSED-APPELLANT.**

D E C I S I O N

SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Joint Judgment^[1] dated December 11, 2012 of the Regional Trial Court, 5th Judicial Region, Branch 9, Legazpi City in Criminal Cases Nos. FC-10-0561, FC-10-0562 and FC-10-0563 all entitled "*People of the Philippines, Plaintiff, versus Edmund R. Gonzalez, Jr., Accused.*", the dispositive portion of which reads:

"WHEREFORE, premises considered, the court finds accused EDMUND R. GONZALEZ, JR. **GUILTY** beyond reasonable doubt in all three (3) counts of the crime of Violation of Sections 5(b), Article III of Republic Act No. 7610 and he is hereby sentenced to suffer the penalty of imprisonment in

1) Criminal Case No. FC-10-0561, a penalty of fourteen (14) years and eight (8) months of Reclusion Temporal minimum as minimum to twenty (20) years of Reclusion Temporal maximum as maximum including the accessory penalty provided under the law.

He is further ordered to indemnify "AAA" the sum of P50,000.00 as civil indemnity and P50,000.00 as moral damages. Also to pay a fine of P25,000.00 to be administered by the Department of Social Welfare and Development as cash fund for the purpose provided under the law.

2) Criminal Case No. FC-10-0562, a penalty of fourteen (14) years and eight (8) months of Reclusion Temporal minimum as minimum to twenty (20) years of Reclusion Temporal maximum as maximum including the accessory penalty provided under the law.

He is further ordered to indemnify "AAA" the sum of P50,000.00 as civil indemnity and P50,000.00 as moral damages. Also to pay a fine of P25,000.00 to be administered by the Department of Social Welfare and Development as cash fund for the purpose provided under the law.

3) In Criminal Case No. FC-10-0563, a penalty of fourteen (14) years and eight (8) months of Reclusion Temporal minimum as minimum to twenty (20) years of Reclusion

Temporal maximum as maximum including the accessory penalty provided under the law.

He is further ordered to indemnify "AAA" the sum of P50,000.00 as civil indemnity and P50,000.00 as moral damages. Also to pay a fine of P25,000.00 to be administered by the Department of Social Welfare and Development as cash fund for the purpose provided under the law.

SO ORDERED."

The facts are:

Accused-appellant Edmund R. Gonzalez, Jr. (Gonzalez for brevity) was charged with three (3) counts of Violation of Section 5(b), Article III of Republic Act No. 7610 in three (3) separate criminal Informations,^[2] the accusatory portions of which read:

a) Criminal Case No. FC-10-0561

"That on or about the 26th day of January, 2009, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and actuated by lust, using his influence as an adult, did then and there willfully, unlawfully and criminally engage in sexual intercourse with one "AAA", a 15 year old minor, which demeans her intrinsic worth and dignity as a human being, to her damage and prejudice."

b) Criminal Case No. FC-10-0562

"That on or about the 7th day of February, 2009, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with lewd design and actuated by lust, using his influence as an adult, did then and there willfully, unlawfully and criminally engage in lascivious conduct with one "AAA", a 15 year old minor, by placing himself on top of her and then touching her breasts, and thereafter by removing her panty and trying to insert his penis into her vagina, which demeans her intrinsic worth and dignity as a human being, to her damage and prejudice.

CONTRARY TO LAW."

c) Criminal Case No. FC-10-0563

"That on or about the 21st day of March, 2009, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and actuated by lust, using his influence as an adult, did then and there willfully, unlawfully and criminally engage in sexual intercourse with one "AAA", a 15 year old minor, which demeans her intrinsic worth and dignity as a human being, to her damage and prejudice.

CONTRARY TO LAW."

When arraigned on June 23, 2010,^[3] accused-appellant Gonzalez, pleaded not guilty to the charges. The pre-trial conference was held on September 28, 2010 and a Pre-trial Order^[4] was issued on the same date. Thereafter, joint trial on the merits ensued.

The prosecution presented "AAA,"^[5] "BBB,"^[6] the mother of "AAA," Dr. Raoul V. Alcantara, Mark Belen, Juan B. Yuson, whose intended testimony was the subject of stipulation by the parties, and Dr. Adelsa Tee, as common witnesses in all the three (3) cases.

Testifying as the private complainant in the three (3) cases, "AAA" declared that: she was fourteen (14) years old in January, 2009, having been born on February 16, 1994; sometime in January 2009, she had a misunderstanding with her mother, so she decided to live with accused-appellant Gonzalez who is the father of her classmates Erika Gonzalez (Erika for brevity) and Erwin Gonzalez (Erwin for brevity), who are twins; since her father died when she was in grade four, she has not experienced fatherly love since then; accused-appellant Gonzalez asked her mother's permission that she be allowed to stay in his house; on January 26, 2009, after living continuously with accused-appellant Gonzalez for sometime, she had a drinking session with him and his daughter Erika; the three (3) of them started drinking at 7:00 o'clock in the evening, consuming one (1) big bottle of Matador brandy; before midnight, Erika went upstairs to sleep, leaving her and accused-appellant Gonzalez downstairs to finish drinking the remaining liquor; as they continued drinking, accused-appellant Gonzalez stood up and told her that he wanted her to watch a pornographic movie on CD; when he played the movie, she was unmindful of it, but she remembers seeing a scene of a man and a woman having sex; while watching the movie, he asked her if he could hold her hand and she allowed him, thinking that it was all he wanted; later, he asked her if he could touch her breasts; she did not accede to his request at first, but she eventually gave in because he was too persistent; as they sat side by side, and while he was touching and mashing her breasts, he told her "*naano ako*", which she did not understand at first, but she later realized that what he meant was he was getting sexually aroused; she started getting uneasy, but she did not show it to him; then, he took her hand, inserted it inside his pants and made her masturbate his penis which was already erect; meanwhile, he continued to mash her breasts one after the other; after about three (3) minutes, he unzipped his pants and put out his penis; she got carried away due to intoxication, as she straddled his lap and continued masturbating him, while he held her breasts; then, he inserted his penis into her vagina through the inner hem of her loose short pants and made a push and pull movement while straddling him; after about three (3) minutes, they changed positions; she was made to stoop with her buttocks facing him; he removed her short pants and panties, inserted his penis into her vagina and made a push and pull movement and after a while, he ejaculated; he cleaned his penis in the comfort room and she washed her vagina after him because she was having her menstruation at that time; he told her not to tell anybody about it and gave her P500.00 that she would use to redeem her cellphone which was pawned; late in the evening of February 6, 2009, she had another drinking spree with Erika and accused-appellant Gonzalez in the house of the latter; they finished drinking at about 2:00 o'clock in the morning of the following day, February 7, 2009, and consumed a one (1) liter of Matador Grande; she slept upstairs in the room of Erika, but she was awakened when she felt something heavy on top of her; when she opened her eyes she saw accused-appellant Gonzalez atop her; when she turned

her back on him, she noticed that Erika was no longer in the room; he kissed her neck, embraced her and pulled her pants down to her thighs just above her knees, as she tried to pull them up; he removed his shirt and pants and lowered his underwear up to his knees; while lying side by side with her back facing him, he inserted his penis into her vagina and made a push and pull movement, but only briefly because she moved away; she moved away from him because she did not like what he was doing; it prompted him to tell her she had no manners (*Wara kang ugari*); after the incident, they both put their clothes on and slept on the same bed; sometime in February 2009 and after the second sexual molestation by accused-appellant Gonzalez, rashes appeared on her vagina and she had a discharge that looked like pus; she also experienced difficulty in urinating; accused-appellant Gonzalez accompanied her to a doctor who prescribed her some medicine without examining her vagina; despite the February 7, 2009 incident, she continued living with accused-appellant Gonzalez because he promised that he would not sexually molest her again; on March 20, 2009, she, Erika and accused-appellant Gonzalez had another drinking spree with Mac and Gener in the store of Willie Rey that lasted until 4:00 o'clock in the morning of March 21, 2009; after the drinking spree they all went home; when they went to bed, accused-appellant Gonzalez lied down beside her on the bed, while Erika slept on the floor; when she woke up at 8:00 o'clock in the morning of March 21, 2009, she felt accused-appellant Gonzalez mashing her breasts; Erika was on the floor and still sleeping because she was too drunk; as she lay on her side with her back against accused-appellant Gonzalez, the latter pulled down her pants and panty; he made her masturbate him, but she removed her hand; he took a baby oil from the shelves above their head, lubricated his penis and inserted it into her vagina; he made a push and pull movement while at her back, as she cried in silence; she tried to awaken Erika by throwing a pillow at her, to no avail; his penis was still erect when it penetrated her vagina, but the erection did not last long because when she pulled her pants and panty up, it was already limp; he pulled up his underwear and turned his back on her; she went downstairs and saw Erwin who asked her why she was crying; she told Erwin that she was sexually abused by his father; Erwin told her to leave the house as he disclosed that his father did the same thing to Erika; heeding Erwin, she left and proceeded to the house of her grandmother; eventually, with the help her friends' father who is from the National Bureau of Investigation (NBI), she filed a case against accused-appellant Gonzalez.^[7]

"BBB," the mother of "AAA" testified that: sometime in May 2009, she was invited by some agents of the NBI regarding the sexual molestation of her daughter, "AAA," by accused-appellant Gonzalez; she came to know accused-appellant Gonzalez in 2007 when she went out looking for her daughter "AAA" who was with his daughter Erika; after talking to her daughter, the latter confirmed that she was sexually molested on three (3) occasions by accused-appellant Gonzalez; and, she accompanied her daughter when she was examined by a doctor who issued a medical certificate.^[8]

Dr. Raoul V. Alcantara, a Medico-legal Officer from the NBI testified that: on May 25, 2009, he conducted a medico-legal examination of private complainant "AAA" who was referred to him by S/Insp. Lanuza for medical examination as a victim of sexual abuse; his findings were: "There is no genital injury noted during the physical examination and genital findings reveal clear evidence of basic injuries to the hymen secondary to vaginal penetration."; the laceration in her hymen could have been caused by a blunt object like a fully erect male penis; and, in connection with his

medical examination of "AAA", he submitted two reports, viz., a preliminary report and an official report duly signed by his superiors in Manila.^[9]

Mark E. Bellen, testified that: "AAA" is her former girlfriend and he came to know her through his friend Erika; he knows accused-appellant Gonzalez who is the father of Erika; on March 21, 2009 at about 8:30 o'clock in the evening, he was with "AAA" at Washington Drive in Barangay Cruzada when she revealed to him that she was sexually molested by accused-appellant Gonzalez in the latter's house; she was crying while narrating to him the sexual molestation that happened more than once; thus, they sought the assistance of Efren Marcha who works with the NBI; he brought "AAA" and Erika to the house of Efren Marcha; he was aware that in February and March 2009, "AAA" lived in the house of accused-appellant Gonzalez because she and Erika are friends; and, he had gone to the house of accused-appellant Gonzalez about five (5) times and even had a drinking session there with him, Erika and "AAA."^[10]

Dr. Adelsa Tee, declared that: "AAA" came to her office complaining of difficulty in urinating and vaginal discharge; after examining "AAA," she found her to have non-gonococcal infection; while her illness is not gonorrhea, it is also a sexually transmitted disease and may have been caused by urinary tract infection; she asked "AAA" how she acquired said illness and she answered that it was through sexual contact; based on her vaginal discharge, the sexual intercourse could have happened a day or two (2) before the medical examination; and, "AAA" was under treatment from May 26, 2009 until June 16, 2009.^[11]

For his part, accused-appellant Gonzalez presented himself and Erwin Lucas Gonzalez, as defense witnesses.

Accused-appellant Gonzalez testified that: he is the father of Erika who is a friend and classmate of "AAA" during the school year 2007-2008; he knows "AAA" because she would always go to their house; "AAA" started living in his house on December 2, 2008 after running away from home; on December 24, 2008, he brought her home and turned her over to her mother, telling the latter that "AAA" was hard-headed; later, however, she came back to his house; she was free to go home and return to his house anytime she wanted; his house has two bedrooms, one of which is for him, while the other is for his children, Erwin and Erika; whenever "AAA" slept in his house, she would use the room of Erwin and Erika; Erwin would give way to her and spend the night downstairs; in the evening of January 26, 2009, he, his two children and "AAA" were in his house where they all spent the night; on February 6, 2009, "AAA" and Erika slept in the bedroom, while Erwin spent the night in the living room downstairs; on February 7, 2009 at about 8:00 o'clock in the morning, when the second alleged incident of sexual molestation happened, he was inside his room, while "AAA" was in another room sleeping; he could not have sexually molested "AAA" because his children, Erika and Erwin, were around; he could not have sexually abused "AAA" on the night of March 21, 2009 because she was with Erika when they slept together in a room; there were times during her stay in his house that "AAA" would come home drunk at about 10:00 o'clock in the evening and knock at his room; she would tell him that she wanted to sleep in his room, but he would tell his children to bring her to their room; there was no instance that she spent the night in his room; during the period January 2009 to March 2009, Erika was no longer attending school, but he knows that "AAA" was enrolled in Camalig; and, sometime in May 2009, "AAA" and Erika left his house.^[12]